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Supreme Court of the United States

OCTOBER 1944 TERM

No. 1174 62

THE EAST NEW YORK SAVINGS BANK,

Appellant,

against

ALVIN HAHN and HANNAH HAHN, his wife,

Appellees.

BRIEF OF APPELLANT

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CHARLES H. HEINLEIN,
on the brief.

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Statement

The only question involved on this appeal is the validity of Chapter 93 of the Laws of 1943 of the State of New York, under the Constitution of the United States, Article 1, Section 10, and 14th Amendment, Section 1. The action was brought in the Supreme Court of the State of New York, Kings County, for a judgment declaring Chapter 93 of the Laws of 1943 to be invalid as an unconstitutional impairment of plaintiff's contractual rights, and granting foreclosure and sale of plaintiff's mortgage. The complaint was dismissed at the close of plaintiff's case (182 Misc. 863, 51 N. Y. Supp. [2d] 496), and from the judgment entered thereon plaintiff appealed direct to the Court of Appeals of the State of New York (N. Y. Civ. Prac. Act, Sec. 588, subd. 4). That court affirmed the judgment dismissing plaintiff's complaint, holding Chapter 93 of the Laws of 1943 to be a valid exercise of the reserved power of the State and not in conflict with the Federal Constitution (293 N. Y. 622).

This appeal is taken to this Court as of right (28 U. S. C. A., Sec. 344 [Judicial Code, Sec. 237], as amended).

Nature of Action

This action is brought to foreclose a mortgage. The bond and mortgage were in the original sum of $5,000 and there is due $4,912.50 with interest from April 1, 1944.

The mortgage is not in default except as to the principal amount which became due April 1, 1924, and has not been extended. If there was a valid mortgage moratorium existing in the State of New York when the action was commenced on March 27, 1944, the mortgage under foreclosure is covered by it. Plaintiff contends that the moratorium law in existence at the time this action was commenced is unconstitutional and invalid. The complaint (fols. 26-39, pars. Tenth to Nineteenth) contains allegations to the effect that the emergency which originally justified the Legislature in enacting the mortgage moratorium in 1933 has long since ceased to exist and that the renewal of the moratorium legislation, as embodied in Chapter 93 of the Laws of 1943, is an unwarranted and unlawful impairment of the obligation of contracts in violation of the Federal Constitution. These allegations have been placed in issue by the denial of the defendants (fols. 46-47).

Status of the Case

The trial court dismissed the complaint at the close of the plaintiff's case. By so doing the court found that the plaintiff's proof was legally insufficient. The facts proved by the plaintiff were not controverted and it is clear from the opinion both at Special Term and in the Court of Appeals, that these facts were accepted as true. As the case now stands, the facts adduced by the plaintiff are undisputed and there is squarely presented the question whether, in the light of these facts, any public emergency now exists justifying this moratorium law which denies (warranting the denial) to a mortgagee the right of foreclosure when his debt is past due and unpaid.

Jurisdiction of This Court

The plaintiff-appellant, having duly drawn into question the validity of Chapter 93 of the Laws of 1943 of the State of New York on the ground that the statute is repugnant to the contract and due process clauses of the Federal Constitution (Art. I, Sec. 10; 14th Amendment, Sec. 1) and the Court of Appeals of the State of New York (the highest court in the State in which a judgment could be had) having decided in favor of the validity of the statute, appeals to this Court as a matter of right (28 U. S. C. A. 344-a).

The appellant has complied with Rule 12 of this Court in filing a statement supporting the jurisdiction of this Court.

The Attorney General of the State of New York has filed a statement opposing the jurisdiction of this Court and has moved to dismiss or affirm.

The Attorney General, admitting that the contract and due process clauses had been duly invoked below, asserts that the appellant's contentions are so unsubstantial as not to need argument before this Court and bases his argument on certain alleged findings of fact drawn from the opinions of the courts below which he states are matters within judicial knowledge and that this Court need not accept jurisdiction to review them further.

The appellant submits that such findings, as may be drawn from the opinions of the courts below, support the appellant's contentions that conditions to which Chapter 93 of the Laws of 1943 are addressed did not exist either at the time of passage of the Act or at the time of the commencement of this action, and that the statute is unconstitutional. The appellant's position is that the conclusions reached result from an erroneous application of the law to the facts and that such is made manifest by the development of the argument herein.

The Legislative Findings

When the original moratorium statute was passed on August 26, 1933, by Chapter 793 of the Laws of 1933, the Legislature declared the existence of a public emergency in the following language:

> "SECTION 1. It is hereby declared that a serious public emergency, affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity of legislative intervention by the enactment of the provisions hereinafter prescribed, and their application until July first, nineteen hundred and thirty-four, is hereby declared as a matter of legislative determination."

The original statute has been renewed annually for ten years except in one instance where the extension was for two years (Laws of 1941, Chap. 782, Sec. 1). On the occasion of each renewal it has been the practice of the Legislature to make a finding that in its judgment the serious public emergency, as declared to exist in 1933, continues and still exists at the time of each legislative renewal. The statute which is called into question in this suit is Chapter 93 of the Laws of 1943. Section 1 of said chapter reads in part as follows:

> "SECTION 1. The serious public emergency, which existed at the time of the enactment of Section 1077-a * * * of the Civil Practice Act as added by Chapter 793 of the Laws of 1933 * * * having continued, in the judgment of the legislature, to the present time and still existing, the provisions of such chapters * * * shall, notwithstanding any provision of such chapter, remain in full force and effect until July 1, 1944 * * *."

When the Legislature made the above quoted finding that the serious public emergency continues and still exists, it did so without any formal inquiry or investigation on its part as a whole, or on its behalf by any legislative committee or otherwise. For aught that appears in the legislative records for the 1943 session, the Legislature either made that finding without any proof at all before it, other than the individual opinions of its respective members, or it relied upon the report which was made to it the previous year by its joint legislative committee on mortgage moratorium and deficiency judgments, which committee made a report to the Legislature on February 24, 1942, which is known as "Legislative Document (1942) #45". This report known as the "Janes Committee Report" was the result of the latest investigation by the Legislature prior to the commencement of this action, on the question whether the "serious public emergency" exists or had ceased to exist.

This report should be considered by the court as part of the record in this case. It contains certain findings, all of which tend to establish that the public emergency no longer existed at the time that the report was made, notwithstanding the bare statement that the emergency still exists. We refer to certain of the findings contained on page 5 of this report for the purpose of showing that, if the legislative finding that the serious public emergency still exists is predicated upon the findings of the Janes Committee, such finding cannot be sustained (fols. 89-94).

Finding #1:

> "That the emergency still exists and that the sudden termination of the moratorium would of itself now create an emergency. Improved business and economic conditions resulting from the defense program and the war have largely been offset by the increase in living costs and the numerous and ever-increasing tax burdens. The average home owner has received no relief from the burden of real estate taxes, and, on the contrary, such taxes have increased since the

first adoption of the moratorium. Any present sudden termination of the moratorium might result in a very large amount of forced liquidation of mortgage indebtedness resulting in loss alike to property owners, mortgagees, depositors and others."

The first sentence of this finding is a contradiction. It states that the emergency still exists but such emergency does not seem to concern the committee nearly so much as a possible new emergency which they fear the restoration of contractual rights of mortgagees might precipitate. The finding admits that business and economic conditions have improved but seeks to offset against this improvement the increase in living costs and taxes.

The testimony of Dr. Bussing (fols. 125-136) shows that in February, 1944, living costs were but 24% above normal although there had been a far greater increase in payrolls, employment, number of persons employed per family, etc. In weighing the value of this finding, it should be remembered that the serious public emergency of 1933 resulted from "abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal reflation of real property values and the curtailment of incomes by unemployment and other adverse conditions". This finding does not assert that any of these conditions still continues. On the contrary it recognizes that business and economic conditions have improved.

Finding #2:

"Conditions generally in real estate have improved and the curtailment of building during the war seems likely to further increase values. That some permanent solution of the moratorium problem should now be made before we pass from the period of war stimulated business activity into a possible period of serious post war depression."

In this finding we have a surprisingly frank statement of the legislative approach. The committee recognizes that

"the abnormal deflation of real property values" existing in 1933 had disappeared by 1942, but the committee was thinking of the moratorium as a legislative problem, a matter which apparently involved other considerations than the mere question whether the serious public emergency of 1933 existed in 1942 or not. Obviously the committee was thinking in terms of expediency, but it recognized that the 1933 emergency had passed and that it was imperative for the Legislature to do something while we are in the prosperous phase of the economic cycle before a genuine emergency again comes upon us.

The remaining six findings (fols. 92-94) contained in this report do not address themselves at all to the question whether the serious public emergency still exists. Finding #3 merely states that interest on moratorium mortgages should not exceed 5%; finding #4 states that when the interest rate is reduced to 5% or lower, then property owners should amortize; finding #5 provides that property owners unable to pay amortization, should be allowed a reasonable time to sell or refinance before foreclosure; finding #6 states that in suits on bonds for interest or advances, a setoff of the fair and reasonable market value of the property should be permitted; finding #7 states that the present law relating to deficiency judgments is satisfactory, and the committee then concludes, as its eighth finding, "that when the moratorium mortgages have been placed on an amortization basis, there will no longer be danger of extensive liquidation on the termination of the moratorium, and the same should then be terminated."

It is clear that findings 3, 4 and 5 are merely a legislative attempt to re-write the mortgage contract. Finding #8 expresses the opinion that once mortgages are amortized the moratorium can be terminated without hardship. If this conclusion is correct, then the moratorium should have been terminated in 1942, for we have shown that the vast majority of mortgages held by savings banks in Brooklyn and Queens were on an amortized basis in 1942 and still are (see Plaintiff's Exhibit 11, p. 146). This exhibit

shows that of loans made prior to 1935 held by savings banks in Brooklyn only 31.3% were non-amortizing. Of this 31.3%, 9.6% represented loans amounting to 66⅔% or less of the appraised value which could be readily refinanced (N. Y. Banking Law, Sec. 235, subd. 6, fols. 207-211, 305-318), so that only 21.7% represented unamortized loans where the loan exceeded two-thirds of the appraised value of the property. In Queens the figures are even more indicative that the fear of disaster, should the moratorium be terminated, is unfounded. In Queens 34.9% of mortgages held by savings banks are unamortized, but 17.6% of these mortgages are on properties where the amount of the mortgage is 66⅔% or less of the appraised value, leaving but 17.3% of mortgages where the amount exceeds two-thirds of the appraised value of the property (Plaintiff's Exhibit 11).

It is impossible to read the report of the Janes Committee without concluding that the "serious public emergency" no longer exists. The committee recognized the fact that real estate values passed the normal level in 1940 and by December, 1941, real estate was nearly 20% above normal (fols. 83-85). The committee also foresaw clearly the stimulus to older residential properties which the war would bring. It states at page 27 (fol. 86):

> "It may well be that the next few years will see a substantial increase in the value and marketability of these older properties. It is this class of property which, to a large extent, is covered by the mortgages which are now within the protection of the moratorium laws."

We have established on the trial that this increase in value has come to pass and that such real estate is now commanding prices in excess of normal. This is a reality which is incompatible with the alleged continued existence of the "serious public emergency" of 1933.

The Testimony

Dr. Irvin Bussing, the head of the Research and Statistical Department of the Savings Banks Trust Company, assembled certain figures contrasting present economic conditions with those in 1933 when a serious public emergency admittedly obtained. These figures are summarized as follows:

FINANCIAL: Demand and time bank deposits in New York State increased 95% from December 31, 1935 to June 30, 1943 (fols. 111-112).

During the year 1933 the savings banks lost $392,000,000, or 7.54% of their deposits. In 1943 savings banks gained $500,000,000, or 8.57% of their deposits (fols. 113-115).

Bank deposits in New York State as of June 30, 1943, amounted to 25.7 billion dollars, which is the highest amount in the entire history of the State (fols. 117-118).

Money in circulation in the United States in 1933 amounted to $45.49 per capita. In February, 1944, it amounted to $151.22 per capita (fols. 120-121). New York State war bond (Series E) purchases by individuals is proportionately greater than that in the country as a whole. During 1942 individual purchases of war bonds (Series E) in New York State were $49 per capita, whereas in the country at large they were but $28 per capita (fols. 121-123).

In 1943, New York State individual purchases were $81 per capita to $65.10 per capita in the entire country. This trend has continued in 1944 (fols. 124-125).

EMPLOYMENT: The number of wage earners in New York State has increased 92½% between 1933 and 1943 (fols. 126, 131-133).

Weekly payrolls of manufacturing enterprises in New York State have increased 266% between 1933 and 1943. Average weekly earnings of workers have increased from

$21.99 in 1933, to $44.68 in 1943, an increase of 103.7% (fols. 127, 128, 131-133).

Moreover, the additional employment has resulted in a substantial increase in the number of individuals per family presently employed (fol. 129).

Department Store Sales: Department store sales increased from 86% of normal in 1933 to 134% of normal in 1943 (the normal period being the period from 1935 to 1939) (fols. 129-131).

Cost of Living: The cost of living in the City of New York has increased 25.1% from 1935 to 1944. The figures throughout the entire State are substantially the same (fols. 131, 133-136).

Availability of Mortgage Money: As of January 1, 1944, in New York State the amount invested by savings banks in mortgages was slightly less than three billion dollars. These banks had available for mortgage lending, within the 65% limit provided by law (Banking Law of the State of New York, Sec. 235, subd. 6), a sum in excess of one billion dollars. As evidence of the difficulty encountered by savings banks in investing these available funds in mortgages, Dr. Bussing pointed out that during 1943 savings banks have taken over one hundred million dollars in mortgages in the adjoining states of Pennsylvania, New Jersey and Connecticut, and have paid premiums on these loans in order to get their money invested (fols. 142-154).

Charles Punia, a real estate broker of twenty-four years' experience, who had personally arranged for the refinancing of mortgages with lending institutions in an amount exceeding $8,000,000 during the past year, testified of his personal knowledge to the fact that residential real property mortgages can be refinanced today at 66⅔% of the sound normal market value of the property if the location and physical condition of the property is satisfactory

(fols. 207-211). He also testified that one- and two-family houses are scarce; that they are bringing good prices and that such prices represent the fair, sound intrinsic value of the properties (fols. 209-211).

Albert Hitchcock, Chief Statistician of the Mortgage Information Bureau of the savings banks in group five, presented to the court certain statistics which we will deal with fully under the heading "Exhibits" (fols. 240-275).

Herbert E. Bode, a real estate broker and president of the Long Island Real Estate Board, testified as to his personal knowledge of prevailing conditions in the real estate and mortgage market. His organization sold about $3,000,000 worth of real estate in 1943 of which $1,000,000 consisted of one-family houses primarily in the Queens area. He testified that the real estate market was very active in 1943 and that it would be more active in 1944 if the houses were available, but houses are getting scarce. Such houses as are sold bring prices that represent at least the fair, sound intrinsic value of the property. Mortgage loans are readily available on one- and two-family houses at 60 to 66⅔% of the prices which such buildings can be sold for today and savings and loan associations are lending up to 80% of the sales price. Mr. Bode's firm in the years subsequent to 1933 had been engaged quite extensively in the management of real estate and its management business has decreased substantially in the last two and a half years because of the increased sales of this property (fols. 305-318).

The Exhibits

Exhibits 1 and 2 are the bond and mortgage.

Exhibit 3 (p. 135) is an article from the New York Times relating to a report sent by the New York City Tax Collector to the City Treasurer showing that 91.1% of real estate taxes for the year 1943-44 had been paid by April 30th (the last day to pay without penalty) and the City

Collector predicted that 94 or 95% of the current taxes would be paid before June 30th. The report stated:

> "Continued improvement in employment with a consequent demand for bigger and better apartments, increases in earnings of families as well as the number of those in the family working, and tremendous increases in business, have all had their effect in improving tax conditions."

Exhibits 4 to 11 relate to statistics compiled by Group 5 Savings Banks Mortgage Information Bureau and were the subject of Mr. Hitchcock's testimony. They show the following:

Exhibit 4 (p. 139) shows that Brooklyn savings banks had available for investment in mortgages, on January 1, 1944, the sum of $454,000,000 and all Group 5 savings banks in Brooklyn, Queens and Nassau had available for mortgage investment on January 1, 1944, the sum of $542,000,000. It should be pointed out in connection with this exhibit that Manhattan savings banks also have large sums of money available for mortgage investment in Brooklyn and Long Island.

Exhibit 5 (p. 140) is a listing of all real estate held by Group 5 savings banks in Brooklyn, Queens and Nassau on January 1, 1944. It shows that the holdings of one- and two-family houses by these savings banks were as follows:

	No.	*1 Family*	*2 Family*
Brooklyn	120	$668,107	
	147		$750,189
Queens	119	749,399	
	35		198,063
Nassau	32	266,000	
	2		11,000

Having in mind that the moratorium is primarily designed to protect the home owner, that is, the owner of a one- or two-family house, it is clear that the overhang of

foreclosed institutional real estate at the present time is inconsequential, thereby confirming that real estate can be readily sold today at fair prices.

Exhibit 6 (p. 141) contains a compilation by years from 1934 to 1943, of real estate held, foreclosures, sales and new loans of Group 5 savings banks. This exhibit shows that the real estate held by savings banks has been constantly declining; that foreclosures have been constantly declining; that real estate sales activity has been greater in recent years in proportion to the amount of real estate held and that new mortgage loans were greatly on the increase up to 1941 when building construction was necessarily curtailed as a result of the war effort.

Exhibit 7 (p. 142) shows the contrast between the condition of arrears on mortgages held by Group 5 savings banks from October 1935 to October 1943. It shows that in October 1935 19% of the mortgages, aggregating 25% of the dollar amount, were in arrears and that this figure has constantly declined until in October 1943 there were in arrears but 2.2% of the mortgages aggregating dollar amount of but 3%.

Exhibit 8 (p. 142) shows figures relating to occupancy of six-story apartment houses constructed in Brooklyn since 1934. The number of vacancies in these buildings has decreased from 7% in 1938 to .07% in 1943.

Exhibits 9 and 10 (pp. 142-144) are charts prepared in 1942 covering Brooklyn and Queens. These charts show the amount of savings bank mortgages being amortized in 1942 and those not on an amortized basis at that time.

Exhibit 11 (p. 146) is an elucidation of the charts found in Exhibits 9 and 10. The figures in Exhibit 11 are illuminating because they show that in spite of the moratorium, economic conditions generally, and real estate conditions in particular, have been sufficiently favorable to enable the savings banks, despite this adverse legislation, to place about two-thirds of their mortgages, made prior to 1935, on an amortized basis at rates of amortization in excess of the statutory 1%. These figures conclusively demon-

strate that the legislative apprehension that an abrupt termination of the mortgage moratorium law would result in extensive liquidation and perhaps bring on another emergency is rank speculation wholly unsupported by the realities.

Exhibits 12 to 19 are figures taken from the brief of the Mayor of the City of New York in opposition to the efforts of the Metropolitan Fair Rent Committee to secure O.P.A. approval of a general 10% rent increase over rentals prevailing on March 1, 1943. Each exhibit shows the source of the figures contained therein.

Exhibit 12 (p. 148) is a vacancy survey of competitive apartments in Manhattan. It shows that as of February 15, 1944, the vacancies in apartment houses, nine stories and over, were but 1%; the vacancies in six-story elevator apartments were 0.5% and the vacancies in walk-up apartments were but 0.8%. These figures are indicative of the serious housing shortage which tends to make residential dwellings encumbered by moratorium mortgages more valuable at this time.

Exhibit 13 (pp. 149-152) is a survey of vacancies in old law tenements as of April 1, 1944. This shows that there are 8% vacancies in this type of building but the exhibit points out that many of these vacancies exist because the buildings are unfit for human habitation. There is also attached to this exhibit a list showing the number of buildings and apartments in the various boroughs of New York City which are unfit for human habitation.

Exhibit 14 (p. 153) shows the extent of delinquencies in New York City real estate taxes from 1924 to 1942-43. The percentage of delinquencies has decreased from a high of 26.46% in 1932 to a low of 7.76% as of June 30, 1943. The latter percentage is lower than the normal years of 1924 and 1925, and the boom years of 1928 and 1929. As indicated by Exhibit 3, the percentage of delinquencies will be down to but 5% or 6% for the year ending June 30, 1944.

Exhibit 15 (p. 154) gives a survey of vacancies in competitive apartments in Manhattan, not including old law tenements, for the years from 1924 to 1944, and shows that these vacancies of less than 1% are at the low point for the entire twenty-year period.

Exhibit 16 (pp. 155-157) is a listing of 100 examples of Manhattan foreclosures during 1943 where the amount due on the mortgages exceeded the assessed value.

Exhibit 17 (pp. 157-159) is a similar listing of 100 instances where deeds were surrendered in lieu of foreclosure where the amounts due on the mortgages exceeded the assessed value.

It is common knowledge that real estate in the City of New York in the past several years has not been underassessed. In most instances the assessed valuation has equalled or exceeded the fair market value of the property. These exhibits, therefore, shed a great deal of light upon the conditions which the moratorium legislation is actually being used to protect. It requires no argument that a property owner who has no real equity in his property should not be perpetuated in his ownership by moratorium legislation with the concomitant deprivation of the right of the mortgagee to acquire the property and thereby salvage as much as he can from his mortgage investment. We believe that the facts set forth in the record, bearing upon economic conditions generally and real estate conditions in particular, amply demonstrate that if a property owner has kept his property in good condition and has any real equity in it, the time is propitious for him to arrange refinancing and perform his obligations to the mortgagee. If a property owner is unable to do so at this time it must be because he has no equity to protect, and if such is the case the mortgagee should not be deprived of his remedies.

Exhibit 18 (p. 160) contains a table showing the basic New York City real estate tax rates from the years 1939-40 to 1944-45, indicating that taxes during the coming year will be lower than at any time since 1939.

Exhibit 19 (pp. 160-161) is a published article referring to 47 mortgages on six-story elevator apartments built between 1935 and 1938 which were refinanced in 1943 at a 7% increase in principal and at a decrease of from 4.80% to 4.22% in interest rate. This emphasizes the trend toward easier credit on better terms.

Present Conditions

We state without hesitation that if the case were to be tried today, the proof would show that there has been continued and progressively greater improvement in economic conditions with respect to each of the factors dealt with in the testimony and exhibits.

Developments of Contemporary History

Appellant's position is that if it can establish to the satisfaction of the court that there presently exists no serious public emergency resulting from "the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment", the justification for moratorium legislation has disappeared and Chapter 93 of the Laws of 1943 must be declared invalid. Developments of contemporary history overwhelmingly establish that there has been a complete reversal of the desperate economic circumstances which required the original enactment of the moratorium law; that today we are living in an era of economic prosperity with all financial institutions in a healthy condition, with ample credit available to everyone and with every agency of the federal government bending its efforts to bring about a liquidation of existing obligations as one means of checking the sharply rising inflationary trend which is in serious danger of getting out of control (fols. 338-362).

We, therefore, now make reference to certain matters which we ask the court to judicially notice as evidence of the reversal of circumstances which indicate that today, if any emergency exists at all, it is an emergency arising from the fact that people generally have too much money, too little goods to spend it on, too few places to live and too few workers to do all the jobs that must be done. We have not attempted to include the documents relating to these matters in the record; in the interests of conserving paper and expense, but the court is empowered to take judicial notice of them (*Chastleton Corp.* v. *Sinclair*, 264 W. S. 543).

Following the Presidential Proclamation of March 9, 1933 (1 C. F. R. Cum. Supp. 2.1, Sec. 120.1), declaring a "banking holiday", the Federal Government took steps to relieve the grave conditions from which the emergency resulted. Emergency relief legislation was enacted to meet widespread unemployment and the inadequacy of state and local relief funds. These enactments have since been terminated because the conditions they were designed to cure have been remedied (15 U. S. C. A., Secs. 721-728, and Secs. 721-728 app.; historical note).

Among the various agencies created was Works Progress Administration, the major function of which was to provide useful work on public projects for unemployed workers. This agency is now being liquidated, provision therefor having been made by an act of the Congress of the United States, July 12, 1943 (C. 229, Title I, 57 Stat. 540; note, 15 U. S. C. A. [App.], Secs. 721-728).

Another of the agencies created was the Civilian Conservation Corps for the purpose of providing employment as well as vocational training for youthful citizens who were unemployed and in need of employment (16 U. S. C. A., Secs. 584 et seq.). Congress, by Acts of July 2, 1942, C. 475, Title II, 56 Stat. 569, and July 12, 1943, C. 221, Title II, 57 Stat. 409, appropriated funds to enable the director of C. C. C. to provide for the liquidation of C. C. C., said liquidation to be accomplished as quickly as

possible but in any event not later than June 30, 1944 (16 U. S. C. A., Secs. 584 et seq., note).

Also, by an Act of Congress entitled Home Owners Loan Act of 1933, the Home Owners' Loan Corporation was created. Its purpose was to grant long term mortgage loans, at low interest, to distressed home owners who were unable to procure financing through normal channels, and to help stabilize real estate and mortgage values (12 U. S. C. A., Secs. 1461 et seq.). As provided by the Act, the Corporation ceased its lending activities in 1936 and has since been engaged in liquidating its loans and other assets. Up to June 30, 1943, total loans, subsequent advances, and other investments of the Corporation in its loans, sales contracts and properties reached a cumulative total of $3,484,000,000. On the same date $1,852,000,000 or 53.1% of this amount, had been liquidated. Of the 195,600 properties taken over by the Corporation, 171,000 or 87%, had been sold. (See United States Government Manual, Winter 1943-44, p. 139. See also, Report of Home Owners Loan Corporation, 78th Congress, 2nd Session, House Document #448.)

The Federal Government also took other and more permanent measures to prevent a banking and financial collapse such as that which occurred in 1929 through 1933. Among the measures taken was the creation of the Federal Deposit Insurance Corporation (12 U. S. C. A., Secs. 264 et seq.). The chief function of the Corporation is to insure the deposits of all banks, Federal and State, entitled, under the Banking Acts of 1933 and 1935 to the benefits of insurance. Each depositor is insured to maximum amount of $5,000. The reports of the Corporation will indicate the vast number of banks insured and the healthy state of the banking community.

Under the National Housing Act, approved June 27, 1934, subsequently amended (12 U. S. C. A., Secs. 1710 et seq.) there was created the Federal Housing Administration, "to encourage improvement in housing standards and conditions and to provide a system of mutual mortgage

insurance" and for other purposes. All the money loaned is private capital. The F. H. A. lends no money, its function being only to encourage the making of housing loans by private institutions through a system of mortgage insurance. This agency has insured mortgage loans well in excess of $5,000,000,000, the exact figures of which may be gleaned from the 1943 and 1944 issues of "Portfolio", a quarter-annual publication of the Federal Housing Administration. (See U. S. Government Manual, Winter 1943-44, pp. 140-144).

The second World War started with the invasion of Poland by Germany on September 1, 1939, Great Britain having declared war on Germany on September 3, 1939. (See note re Proclamation of the President of the United States #2374, proclaiming a state of war between Germany and the several powers, 50 U. S. C. A. [App.], p. 58.) With the advent of war in Europe it became necessary for the United States of America to take serious consideration of the national defense and to set its productive processes in order.

The Lend Lease Act of March 11, 1941, C. 11, 55 Stat. 31 (see par. 2552, C. C. H., "War Law Service", Vol. 1), empowered the United States of America "to sell, transfer title to, exchange, lease or otherwise dispose of defense articles" and this country became the "arsenal of democracy".

The productive processes of the nation having been set in motion by the needs of those who were to be the nation's allies, and in the interest of national defense, the President issued Executive Order #8734, on April 11, 1941, establishing the Office of Price Administration and Civilian Supply (1 C. F. R., Cum. Supp. 2.1, p. 821) to control inordinate rises in prices and to regulate the supply of goods in the face of increased demands.

On December 7, 1941, there occurred the sneak attack on Pearl Harbor and on December 8, 1941, the United States declared war on Japan (Ch. 561, 55 Stat. 795) and on December 11, 1941, on Germany (Ch. 565, 55 Stat. 796). (See

C. C. H., "War Law Service," Vol. 1, paragraphs 2501 and 2502).

The entrance of the United States of America into the War required the nation's productive processes to be set in motion to the fullest capacity.

On January 30, 1942, the Emergency Price Control Act of 1942 (Ch. 56, Stat. 43, 50 U. S. C. A., secs. 901 et seq.) was approved. The Act was "declared to be in the interest of national defense and security and necessary to the effective prosecution of the present war" and its purposes "to stabilize prices and to prevent speculative, unwarranted and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency, to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors and persons dependent on life insurance, annuities and pensions, from undue impairment of their standard of living * * * which would result in abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse in values * * *." (See 50 U. S. C. A. [App.], Secs. 901 et seq. and note thereunder.)

The annual wage and salary disbursements having risen tremendously and the markets having been flooded with purchasing power, the President, on September 9, 1942, sent his message to Congress calling attention to the need of an all inclusive control of the costs of production to prevent inflation (House doc. No. 834, Congressional Record of September 7, 1942, Vol. 88, p. 7283; reprinted U. S. Code Congressional Service, Vol. 9, 1942, p. 1514).

The Presidential message embodied a seven point program to avoid runaway inflation. We quote the President's seventh point (fol. 341):

"To keep the cost of living from spiralling upward we must discourage credit and instalment buying and encourage the paying off of debts, mortgages and other obligations, for this promotes savings, retards excessive buying, and adds to the amount available to the creditors for the purchase of war bonds."

By Act of October 2, 1942 (Ch. 578, 56 Stat. 765; 50 U. S. C. A. [App.], Secs. 961 et seq.), the President "in order to aid in the effective prosecution of the war" was "authorized and directed on or before November 1, 1942 to issue a general order stabilizing prices, wages and salaries • • •." (See C. C. H., "War Law Service", paragraphs 41031 et seq. for Emergency Price Control Act as amended.)

By Executive Order #9250, dated October 3, 1942, there was established the Office of Economic Stabilization (1 C. F. R. Cum. Supp. 2.1, p. 1213; see also Prentice Hall, "Wage Hour Service", paragraphs 6071 et seq., pp. 6071 et seq.). The Director, with the approval of the President, was mandated "to formulate and develop a comprehensive economic policy relating to the control of civilian purchasing power, prices, rents, wages, salaries, profits, rationing, subsidies and all related matters • • •."

Subsequently, on April 8, 1943, by Executive Order dated April 8, 1943, by virtue of the authority vested in the President by the First War Powers Act, 1941 (C. C. H., "War Law Service", Vol. 1, paragraphs 2582-2592) and the Act of October 2, 1942, amending the Emergency Price Control Act (supra) all wages and salaries were frozen and their control vested in the War Labor Board and the Treasury Department.

Under the Emergency Price Control Acts (supra) the Office of Price Administration is vested with control of rents in the interest of preventing undue increases therein because of growing demand in the face of dwindling supply. (See paragraph 41033, C. C. H., "War Law Service".) It is provided that the Administrator "in order to effectuate the purposes of this Act" shall "issue a declaration

setting forth the necessity for, and recommendations with reference to, the stabilization and reduction of rents for any defense rental area housing accommodations within a defense rental area" and "by regulation or order establish maximum rents". The State of New York has been designated a defense rental area and the greater portion of the state, especially the areas containing the large industrial areas, including the City of New York, have by regulation been made subject to maximum rents. (See paragraph 49111, C. C. H., "War Law Service," Price, Vol. 4, relating to various rental areas and paragraphs 49121 and following setting forth standard regulations.)

It has not only been found necessary to stabilize prices, profits, rents, etc., to prevent abnormal increases in prices, profits, rents, it also has been necessary to mobilize and utilize every available bit of manpower of the nation to perform the miracles of production which have been wrought in the last few years. To assure the most effective mobilization and utilization of the national manpower, by Executive Order, dated April 18, 1942, the War Manpower Commission was established. (See C. C. H., "Manpower Law Service," paragraphs 18254 and following, page 18251, setting forth Executive Order #9139 and successive orders amendatory thereof.)

On August 16, 1943, the War Manpower Commission found it necessary to impose regulations to "eliminate wasteful labor turnover", to reduce "unnecessary labor migration", direct the "flow of scarce labor where most needed in the war program" and to assure "the maximum utilization of manpower resources". (See Regulation #7, War Manpower Commission, Prentice Hall, "Wage Hour Service," paragraphs 1331 and following; also, C. C. H. "Manpower Law Service," paragraphs 18301-03).

Bearing out the necessity for the regulation and control of prices, rents, etc., in the face of scarcity of civilian goods and housing facilities, and indicative of swollen wage and salary incomes, is the enormous increase in bank deposits as reflected in the Report of the Superintendent

of Banks of the State of New York covering the year of 1943. (See 1944 Legislative Document #21.)

The foregoing indicates that the conditions giving rise to the emergency which in 1933 resulted in the Moratorium Law (Ch. 793 of the Laws of 1933) no longer exist. The emergency relief legislation has become executed and no longer is in effect; as witnessed by the liquidation of W. P. A. and C. C. C. The Federal Government has taken measures to prevent and alleviate future emergencies as manifested by F. D. I. C. The distressed home owner has been provided for and is no longer with us as indicated by the H. O. L. C., its loaning activities having been terminated in June of 1936, and its assets having been substantially liquidated. There is a free mortgage market on reasonable terms, as is made clear by the success of the F. H. A. program. The opportunities for employment have so reversed themselves, that it has been found necessary to control the manpower supply for its maximum utilization through the Manpower Commission. Incomes have been so tremendous in the face of scarce supplies, that it has been found necessary to control prices, rents, wages, salaries, and all the factors entering into the cost of production, to prevent further inflation in values, as witnessed by the "Price Control" and "Inflation Control" Acts and the "Wage and Salary Freezing Orders". The complete reversal of banking and financial conditions are fully demonstrated by the 1944 Report of the Superintendent of Banks of the State of New York. That real estate conditions are the very antithesis of what they were in 1933 is amply demonstrated by the record in this case.

Moratorium Legislation in Other States

A review of the moratorium situation throughout the United States is enlightening. Twenty-three states never adopted any mortgage moratorium legislation at all. Of the remaining twenty-five states which adopted moratorium

legislation, such legislation no longer exists in twenty-four of them. The only state which still has mortgage moratorium legislation on its statute books is the State of New York.

Mortgage moratorium legislation has been declared unconstitutional in the following states:

Iowa—*First Trust Joint Stock Land Bank of Chicago* v. *Arp* (283 N. W. Rep. 441).

Mississippi—*Jefferson Standard Life Insurance Company* v. *Noble* (188 S. Rep. 289).

Arizona—*Pouquette* v. *O'Brien* (100 Pac. Rep. [2d] 279).

Nebraska—*First Trust Company* v. *Smith* (277 N. W. Rep. 762).

Kansas—*Farm Mortgage Holding Co.* v. *Miller* (57 Pac. Rep. [2d] 35).

Texas—*Travelers Insurance Company* v. *Marshall* (76 S. W. Rep. [2d] 1007).

In the following states mortgage moratorium legislation has either been repealed or has expired:

Arkansas, Delaware, Idaho, Illinois, Louisiana, Maryland, Michigan, New Hampshire, Oklahoma, South Carolina, California, Minnesota, Montana, North Dakota, South Dakota, Ohio, Vermont and Wisconsin.

Points of Law

I

The recent decisions of this Court compel the conclusion that the New York State Mortgage Moratorium legislation is no longer valid.

II

The continued existence of an emergency is a necessary prerequisite to the validity of the statute.

III

The statute under attack cannot be sustained on the ground that a new emergency has arisen.

IV

No new emergency has arisen since 1933 to justify the continuance of the moratorium.

V

The Court of Appeals gives no valid reason to sustain the statute.

ARGUMENT

POINT I

The recent decisions of this Court compel the conclusion that the New York State Mortgage Moratorium legislation is no longer valid.

The record in this case contains overwhelming evidence that the "public emergency" of 1933 no longer continues. Indeed, if there were no record at all, it would be difficult to escape this conclusion. Everyone knows that there are jobs for all who will work; that people generally have money to spend; that spending is restricted because of the scarcity of goods and that bank deposits are gaining at

an unprecedented rate. These facts were not disputed at the trial. The Court of Appeals admitted that the "legislature could not ignore the great changes in the economic situation" (293 N. Y. 622, 628).

With regard to conditions in the time intervening between the trial and the hearing of this appeal, we rely on the knowledge of this Court and upon the continued policies of Congress and the Executive Branch of our Government to check inflation. The court is at liberty to draw on its own knowledge for the purposes of this case (*Chastleton Corp.* v. *Sinclair*, 264 U. S. 543).

The determination of this case requires merely the application of the principles laid down in the *Blaisdell* case (*Home Bldg. & L. Assn.* v. *Blaisdell*, 290 U. S. 398). In his opinion in that case Chief Justice Hughes posed several questions of constitutional law which were there presented for determination, namely (p. 429):

1. What is a contract?
2. What are the obligations of contracts?
3. What constitutes impairment of these obligations?
4. What residuum of power is there still in the state, in relation to the operation of contract, to protect the vital interests of the community?

The first three questions have been so fully and completely answered in that case that further discussion of them is unnecessary. On the authority of the *Blaisdell* case we may state with confidence the following conclusions with respect to the case at bar:

1. The mortgage held by appellant is a contract within the meaning of the Constitution.
2. The mortgage contains obligations which are within the protection of the contract clause.
3. The statute under attack impairs to some extent the obligations of the mortgage contract.

The fourth question, namely, the extent of the residuum of power in the states to legislate concerning existing contracts, cannot be categorically answered. The answer in each case depends upon its own facts and circumstances and, as the court notes, frequently involves problems both intricate and vexatious. Yet the court did undertake to define the limits of this residuum of power. The opinion points out (p. 435):

> "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile—a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing constitutional prohibition with the necessary residuum of State power has had progressive recognition in the decisions of this Court."

Quoting from Mr. Justice Brewer in *Long Island Water Supply Co.* v. *Brooklyn* (166 U. S. 685, 692), the court continues (pp. 435-436):

> "But into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the pre-existing and higher authority of the laws of nature, of nations or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulations, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control as conditions inherent and paramount, wherever a necessity for their execution shall occur."

Again, quoting from Mr. Justice Holmes in *Hudson Water Co.* v. *McCarter* (209 U. S. 349, 357), the court continues (pp. 437, 438):

> "One whose rights such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject matter."

The court continues (p. 439):

> "Undoubtedly, whatever is reserved of State power must be consistent with the fair intent of the constitutional limitation on that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other. This principle precludes a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts, or the denial of means to enforce them. But it does not follow that conditions may not arise in which a temporary restraint of enforcement may be consistent with the spirit and purpose of the constitutional provision and thus be found to be within the range of the reserved power of the State to protect the vital interests of the community. It cannot be maintained that the constitutional prohibition should be so construed as to prevent limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great calamity such as fire, flood or earthquake (see American Land Co. v. Zeiss, 219 U. S. 47; 55 L. ed. 82, 31 S. Ct. 200). The reservation of State power appropriate to such extraordinary conditions may be deemed to be as much a part of all contracts as is the reservation of State power to protect the public interest in the other situations to which we have referred. And if State power exists to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood or earthquake, that power cannot be said to be non-existent when the urgent public need demanding such relief is produced by other and economic causes."

Finally, the court concludes that when a temporary interposition of State power becomes necessary to relieve from a disaster, whether physical or economic, "it is limited to the exigency which called it forth" (p. 447):

> "* * * the operation of the statute itself could not validly outlast the emergency or be so extended as virtually to destroy the contracts" (p. 447).

As stated by Lewis, J., in dissenting opinion in the Court of Appeals (293 N. Y. 622, 630):

> "'It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends.' (Home Bldg. & L. Assn. v. Blaisdell, 290 U. S. 398, 442.) 'A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed.' (Chastleton Corp. v. Sinclair (per Holmes, J.), 264 U. S. 543, 547-8.)"

To extend the application of the statutory restriction beyond the period of emergency during which the exercise of the sovereign power is warranted, defeats the purpose of the contract clause and threatens the "business of society", endangers "commercial intercourse", the "existence of credit", the "morals of the people" and the "sanctity of private faith" (see quotations from Marshall, Ch. J., in *Ogden* v. *Saunders*, set forth in the *Blaisdell* case, supra, p. 428).

If it be the fact that the economic welfare of the people generally no longer requires restrictions upon the right to collect mortgage principal, then the moratorium legislation under attack goes beyond the limitations on State power as set forth in the *Blaisdell* case (supra). The legislation cannot be justified as a mere substitution of remedies for the restriction against collection of the principal of mortgage debts for a period of more than twelve years is not a mere modification of the remedy but is a substantial impairment of contractual rights of mortgagees (see *Oshkosh Water Works Co.* v. *Oshkosh*, 187 U. S. 437; *Barnitz* v. *Beverly*, 163 U. S. 118).

POINT II

The continued existence of an emergency is a necessary prerequisite to the validity of the statute.

The appellant does not dispute that in 1933, when the first moratorium law was enacted (Laws of 1933, Ch. 793) an emergency existed which justified the passage of the law and the temporary suspension of the contractual rights of mortgagees. We urge, however, that the emergency which originally justified such suspension was temporary in character. If this were not so, such suspension would have been unwarranted. Twelve years have now passed since the restriction was imposed. If it is the legislative finding that conditions of economic tension have continued for twelve years, then the conditions should no longer be characterized as temporary. We have proven that these conditions have righted themselves and neither the defendant nor the Court of Appeals asserts the contrary. But, if we are wrong and the Legislature is right, it must be held that such conditions have developed from a temporary emergency into a continuing status. It should be judicially held that instead of a temporary emergency the economic stress, which began with the depression, has brought about a downward revision of values which are not temporary in their nature. It is not within the scope of the reserved power of the State to deal with permanent revision of property values when the exercise of that power exceeds the constitutional limitation placed upon it by the contract clause of the Constitution.

Chief Justice Hughes states in the *Blaisdell* case, at page 426:

> "While emergency does not create power, emergency may furnish the occasion for the exercise of power
> * * *"

In *Wilson* v. *New* (243 U. S. 332, 348), it is stated:

> "* * * although an emergency may not call into life a power which has never lived, nevertheless emergency might afford a reason for the exercise of a living power already enjoyed. * * *"

All exercise of the police power does not depend upon emergency. There are some subjects that are so inherently bound up with public welfare that the State has the right to legislate concerning them in order to preserve the public interest, even though contracts be impaired by such legislation; among these subjects are milk (*Nebbia* v. *New York*, 291 U. S. 502), insurance (*German Alliance* v. *Kansas*, 232 U. S. 389), intoxicating liquors (*Boston Beer Co.* v. *Massachusetts*, 97 U. S. 25), lotteries (*Stone* v. *Mississippi*, 101 U. S. 814), maintenance of nuisances (*N. W. Fertilizing Co.* v. *Hyde Park*, 97 U. S. 659), shares of stock in building and loan associations (*Veix* v. *6th Ward Bldg. & Loan Assoc. of Newark*, 310 U. S. 32). There are other subjects which, by reason of practices of trade, progress of society, innovations of science or invention, and the like, develop a public aspect which might warrant the exercise of reserved State power where such exercise would not have been warranted in years past. We concede that housing is a subject of vital concern to the public and that the State has reserved power to deal with this subject for the protection of its citizens. It is conceivable that practices could develop in the business of financing new or existing housing facilities which might be injurious to the general public. If such practices involved mortgages, we have no doubt that the State could enact laws to correct the evil which had developed and such laws could not be attacked because they conflict with the contract clause, nor would it be necessary that such legislation be temporary or predicated upon an emergency. Permanent legislation could be enacted so as to stamp out the evil for all time (*Veix* v. *6th Ward*, 310 U. S. 32, 329).

But such is not our situation. We have here no evil either in the past due mortgages themselves, or in the

practice through which they came into being. We have validly subsisting contracts which the State would undoubtedly have lent its power to enforce were it not for the sudden onset of an economic crisis for which no one was responsible and which mortgagor and mortgagee alike were without power to prevent. In such a crisis the reserved power of the State asserted itself for the protection of all its citizens. When the crisis subsided, the exercise of State power should have been withdrawn. The continued exercise of that power, beyond the economic necessity which called it into being, has created inequality in that the State is no longer protecting all its citizens but is preferring a favored group to the detriment of another group. The reserved power of the State cannot thus be constitutionally exercised (*W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426).

In *W. B. Worthen* v. *Thomas* (supra), Chief Justice Hughes thus interprets the holding of the *Blaisdell* case (p. 433):

> "But we also held that this essential reserved power of the state must be construed in harmony with the fair intent of the constitutional limitation, and that this principle precluded a construction which would permit the state to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them."

The Chief Justice made it clear that the only justification for the exercise of the State's reserved power with respect to mortgage contracts was the existence of a so-called "public disaster". Mortgages are entitled to protection of the state and are entitled to have preserved, their qualities as an acceptable investment for a rational investor (Cardozo, J., *W. B. Worthen* v. *Kavanaugh*, 295 U. S. 56, 60).

The legislation cannot be justified on the ground that there are still some people who require its help. The need must be general. We quote again from the *Blaisdell* case (supra, p. 446):

"It does not matter that there are or may be individual cases of another aspect. The legislature was entitled to deal with the general or typical situation. The relief afforded by the statute has regard to the interest of mortgagees as well as to the interest of mortgagors. The legislation seeks to prevent the impending ruin of both by a considerate measure of relief."

The 1943 renewal and subsequent renewals of the New York statute do not meet the foregoing test. The interest of mortgagors generally no longer requires the legislation and it disregards entirely the rights and interests of mortgagees.

In *Block* v. *Hirsch* (256 U. S. 135, at 157), Holmes, J., states:

"A limit in time, to tide over a passing trouble, may well justify a law that could not be upheld as a permanent change."

In its present aspect the legislation seems to have survived the passing trouble. The trouble at which it is now directed is not of a passing nature. Property owners whose properties have not benefited by the general upturn in values are confronted by difficulties which are not transitory in their nature. The legislation cannot be sustained merely because it tends to relieve, for the time being, the troubles of this limited group.

POINT III

The statute under attack cannot be sustained on the ground that a new emergency has arisen.

For the first time in the New York Court of Appeals the learned Attorney General of the State of New York sought to justify the statute, not on the ground of the alleged emergency set forth in the statute itself, but on the ground

that a new emergency had come into being which warranted the Legislature in continuing the statutory restriction on the collection of mortgage debts. To support the existence of this new emergency he quoted the message of Governor Dewey to the Legislature on January 6, 1943, in which the Governor stated:

> "During the economic collapse of the 1930's a mortgage moratorium was put into effect for the relief of distressed home owners. From year to year this has been renewed. In its present form it prevents foreclosure of mortgages so long as the home owner pays his interest and one percent of the principal each year. In many respects this is highly unsatisfactory. Today, a period of high economic activity, is a time when debts should be paid off. But we must recognize the existence of a new emergency. Wage ceilings, rent ceilings and taxes make it impossible for many property owners to liquidate their debts. Accordingly, I recommend continuance of the mortgage moratorium for another year" (1943 Leg. Doc. #1, p. 9).

This contention was answered in the dissenting opinion of Lewis, J. (293 N. Y. 622, at 630), where he said:

> "We come then to the statute here called into question (L. 1943, ch. 93) as to which it is important to note that, as in the nine preceding similar laws, the public emergency assigned as the reason for the mortgage moratorium legislation was not some new or different form of abnormality in 'economic and financial processes' affecting public welfare within the State. The reason for each succeeding enactment was the same and is typically expressed in the legislative finding within section 1 of chapter 93 of the Laws of 1943 with which we are now concerned and which provides in part: 'Section 1. The serious public emergency, *which existed at the time of the enactment of sections ten hundred and seventy-seven-a* • • • *of the civil practice act* as added by chapter seven hundred and ninety-three of the laws of nineteen hundred thirty-three • • • *having continued*, in the judgment of the legislature, *to the present time and still existing*, the provisions of such chapters • • • shall,

notwithstanding any provision of such chapter, remain and be in full force and effect until July first nineteen hundred forty-four * * *.' (Emphasis supplied.)"

The New York Legislature did not, in 1943, predicate the renewal of the moratorium upon any change in the economic situation although its legislative committee did recognize that substantial improvement had taken place in 1942 (fols. 82-90). It reiterated the same old emergency which it had declared to exist in Chapter 793 of the Laws of 1933, namely, the one "resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions."

It is interesting to note that the Governor's message in 1944 made no reference to any new emergency but flatly admitted that the adverse conditions which originally required the moratorium no longer exist. The following is the complete statement of the Governor on the subject of mortgage moratorium in his message to the Legislature on January 5, 1944:

"MORTGAGE MORATORIUM

To meet the emergency conditions during the economic collapse of the 1930's a mortgage moratorium was put into effect. This has been renewed from year to year. In its present form it prevents the foreclosure of mortgages so long as the home owner pays his interest and 1% of the principal each year. *The conditions of unemployment and reduced income which called this legislation into being have long since passed.* The present period of high employment and high income is one in which debts ought to be paid off. Accordingly, I believe that while the mortgage moratorium should be continued so as to avoid undue, sudden hardship, the bill should provide for reasonable payments upon the principal of these debts and require the owners to maintain the premises in good condition" (1944 Leg. Doc. #1, pp. 15-16; emphasis supplied).

We may be sure that the only reason why the protagonists of the moratorium are asserting the existence of a new emergency is that they know that the old one has long since passed out of existence. However, the 1943 enactment cannot be sustained unless the court is satisfied that the legislative declaration of emergency as therein set forth was in accord with the facts. Such a conclusion is impossible on the record in this case.

POINT IV

No new emergency has arisen since 1933 to justify the continuance of the moratorium.

In the previous point we have adverted to the argument of the Attorney General in the Court of Appeals and to the statement in the Governor's 1943 message to the Legislature with respect to the existence of a new emergency. Since the case was argued and decided in the Court of Appeals, the New York State Legislature has again met and has once more renewed the moratorium in modified form (Laws of 1945, ch. 378, infra, p. 61). The new enactment, for the first time since 1933, couches the declaration of emergency in different and more extensive language than that contained in former renewals. We anticipate that the respondents on this appeal will attempt to use the new 1945 legislative declaration to sustain the 1943 statute, and for that reason we shall urge in this point that the expanded legislative declaration furnishes no greater justification for the continued moratory restriction than did the 1943 declaration. The new law provides in part as follows:

> "Section 1. The serious public emergency, which existed at the time of the enactment of sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-d, ten hundred seventy-seven-e, ten hundred seventy-seven-f, and ten hundred seventy-seven-g of

the civil practice act, as added by chapter seven hundred ninety-three of the laws of nineteen hundred thirty-three, and at the time of the enactment of section ten hundred seventy-seven-cc of the civil practice act, as added by chapter eight hundred ninety of the laws of nineteen hundred thirty-four, having continued, in the judgment of the legislature, to the present time and still existing because of the large amount of real estate which would be subject to immediate foreclosure if such sections and chapters were not continued in force and effect, and such emergency having been aggravated by the substantial amount of foreclosed real estate still held by insurance, banking and other financial institutions, by the imposition of ceilings on rents and wages at a time when there has been a disproportionate rise in maintenance and repair costs, and by the fact that over one million of the residents of this state are serving in the armed services of the nation, • • •"

Thus the 1945 Legislature has declared:

(A) That the 1933 emergency still exists because of the large amount of real estate which would be subject to immediate foreclosure.

(B) That the 1933 emergency has been aggravated by the substantial amount of real estate still held by insurance, banking and other financial institutions.

(C) That the 1933 emergency has been aggravated by the imposition of ceilings on rents and wages at a time when there has been a disproportionate rise in maintenance and repair costs.

(D) That the 1933 emergency has been aggravated by the fact that over one million of the residents of the State of New York are serving in the armed forces of the nation.

A

The new legislative declaration is a radical departure from previous declarations. It substantially limits the nature and character of the emergency. It no longer asserts

that there is an abnormal disruption in economic and financial processes, or that the credit and currency situations in the state and nation are abnormal, or that real property values are deflated, or that incomes are curtailed by unemployment or other adverse conditions. It states merely that "because of the large amount of real estate which would be subject to immediate foreclosure" if the moratorium were terminated, the emergency still continues.

Let us assume that, upon the termination of the moratorium, there will be a large amount of real estate subject to immediate foreclosure. It is evidently feared by the Legislature that a flood of foreclosure actions would follow such termination. This argument was developed at length in the court below. It was urged that the real estate market would become cluttered with offerings and that prices of real estate would tumble; that bad properties would all be foreclosed; that marginal real estate would be pulled down with the bad properties; that fiduciaries would be obliged to foreclose in order to prevent surcharges and that these developments might bring about another crisis. The Court of Appeals, in sustaining the statute, apparently gave great credit to this argument (293 N. Y. 622 at 628):

> "On the other hand, an accumulation of past due mortgages resulting from the ten-year-old ban upon actions to foreclose mortgages for default in the payment of principal might reasonably cause apprehension that a flood of foreclosure actions would follow removal of the ban and might itself justify a statute reasonably calculated to stem the impending flood."

The answers to this contention are many, but the one answer which seems to us to deprive the argument of all its validity is that it ignores completely the basis for the exercise of the State's reserved power and is in reality an argument for the perpetuation of the restriction, or in any event, for its continuance long beyond permissible constitutional limits.

It is self-evident that every time the enforcement of rights is suspended for a period of ten years, there will be an accumulation of cases awaiting the removal of the suspension. If the existence of such conditions is to be used to prevent the removal of the ban, it simply means that the moratorium legislation can be extended indefinitely. The *Blaisdell* case (supra) does not stand for any such doctrine and we have looked in vain for any ruling of this Court which would warrant such an expansion of the reserved power of the State. If the contract clause of the Constitution may be thus ignored, then truly, we would reach a point which "takes us beyond the fixed and secure boundaries of the fundamental law into a precarious fringe of extra-constitutional territory in which no real boundaries exist" (Sutherland, J., in *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426 at p. 435).

The question which this Court must decide is not how many people will invoke the aid of the courts in asserting their contractual rights when those rights are restored following the period of suspension, but rather, whether the general economic welfare requires the continued suspension of contractual rights under existing conditions. If the general economic welfare does not so require, the economic forces constantly at work will absorb whatever flood may flow after the ban is lifted. Neither the court nor the Legislature could validly find that the number of expected foreclosures following removal of the bar would cause another economic crisis or threaten the welfare of the people generally. The record in this case overwhelmingly precludes any such finding. The real estate market in New York State is inflated. Money is plentiful. Housing is scarce. There has been no civilian building construction to speak of since conversion for defense and then for war purposes. What better time could be chosen to flood the market with real property offerings?

But, will the market be flooded? All the evidence indicates that there is no sound basis for such apprehension. Twelve years have passed since foreclosures for principal

defaults have been suspended. In that time the vast majority of past due mortgages have been extended voluntarily by agreement between mortgagor and mortgagee. Property owners have readily agreed to amortize their mortgages beyond statutory requirements in consideration of interest reductions and other modifications of the mortgage contract. We have shown (Plff.'s Exs. 9, 10, 11, p. 146) that the mortgages held by savings banks in Brooklyn and Queens, which were being amortized at the statutory rate, or less, in 1942 were only a small percentage of the total mortgages held (see supra, pp. 7-8). There need be no apprehension concerning a large amount of past due mortgages subject to foreclosure. Savings banks in New York State for many years followed the practice of holding open mortgages in their portfolio without causing property owners to be in constant fear of foreclosure. No mortgage will be foreclosed in these days of plentiful free money seeking investment, provided the security is adequate and the owner is willing to liquidate his indebtedness on a reasonable basis.

We have proven that mortgages can be readily refinanced where the security warrants it (Punia, fol. 211; Bode, fol. 313). Undoubtedly there will be foreclosures, but these will be on properties which have been depreciated to such an extent that they are no longer worth the amount of the mortgage. As to them, there is no emergency and the moratorium when applied to mortgages on such properties has been invalid for many years. If the current inflation in real estate values has not brought the value of these properties in the present market to a point where they have an equity over and above the existing mortgage, then it is time that the owner should be divested of an equity which is really non-existent, and the mortgagee permitted to legally salvage what he can of his mortgage investment.

B

It is asserted that there is a substantial amount of foreclosed real estate still held by insurance, banking and other financial institutions. We assert that the overhang of institutional real estate from the depression was insignificant in 1943 and is today practically non-existent. Of course, every institution probably retains, involuntarily, some residue of foreclosed real estate but such residue consists in the main of structures having some special use or unique character not affected by general real estate trends, or so obsolete that it has outlived its usefulness. If any institutions are carrying other types of real estate on their books we may be sure that it is because such real estate is being deliberately held, either because its rental return is highly satisfactory or its owners expect future benefit by reason of the inflationary trend.

The trial court predicated its decision sustaining the moratorium upon the fact that there was an overhang of institutional real estate. The court used the following language (182 Misc. 863; fols. 489-490):

> "The figures show that member banks in Brooklyn had an overhang of real estate as of the end of 1939 of $49,360,469; and as of January 1st, 1944 of $17,105,680. In Queens the figures were (plaintiff's exhibit 6) at the end of 1939, $9,807,417; and as of January 1st, 1944, $3,857,742. In Nassau the figures were at the end of 1939 $2,487,143; and as of January 1st, 1944, $495,952."

Continuing the court states (fol. 491):

> "There is still to be liquidated and was at the time of the commencement of this action, a considerable amount of real estate held by savings banks, insurance companies, Home Owners Loan Corporation and the trustees of estates. Not until the holdings of these unwilling owners of real estate have been reduced so that they are no longer a factor in competition with real estate of those who willingly acquired real estate and are willing but not forced to sell can it be said that there is a normal real estate market."

We believe that the trial court drew erroneous conclusions from the figures stated. The figures actually show that the overhang of institutional real estate is trivial. The figures were taken from Plaintiff's Exhibit 6 (p. 141). However, if the figures in the first column of Plaintiff's Exhibit 6, showing other real estate held, are read in conjunction with the breakdown of other real estate held as of January 1, 1944 (Plaintiff's Exhibit 5, p. 140), the following appears:

Out of the $17,105,680 of real estate held by Group V Savings Banks on January 1, 1944, there were but 120 one-family houses totalling $668,107 and but 147 two-family houses totalling $750,189. The balance of this real estate consisted chiefly of stores and apartments, business properties, specialties and vacant land. These figures should be considered in the light of the total real estate involved. In the tax year 1941-42 there were in Brooklyn 90,165 one-family houses having an assessed valuation of $598,610,815. Group V Savings Banks only owned 120 of these houses totalling $668,107. This is 0.133% of the total number of houses and 0.111% of the total assessed valuation.

In the same tax year there were in Brooklyn 93,286 two-family houses having an assessed valuation of $748,874,705. Group V Savings Banks only owned 147 of these houses totalling $750,189. This is 0.157% of the total number of houses and 0.10% of the total assessed valuation.

An analysis of the Queens figures is equally striking. Of the $3,857,742 of Queens real estate held by Group V Savings Banks there were 119 one-family houses totalling $749,399 and 35 two-family houses totalling $198,063. More than 75% of the overhanging real estate consisted of store properties with apartments above, business properties and specialties and vacant land.

In Queens County for the tax year 1941-42 there were 152,246 one-family houses having an assessed valuation of $794,877,238. Group V Savings Banks held only 119 of

these houses totalling $749,399. This is 0.077% of the total number of houses and 0.094% of the total assessed valuation.

In the same tax year there were in Queens 52,239 two-family houses having an assessed valuation of $380,532,897. Group V Savings Banks only held 35 of these houses totalling $198,063. This is 0.066% of the total number of houses and 0.052% of the total assessed valuation.

There can be no doubt that the Legislature, in repeatedly renewing moratorium legislation, has been acting from a desire to assist the small home owner in the one or two-family home group. This is clear from the Janes Committee Report (Legislative Document 1942, #45) and the Nunan Committee Report (Legislative Document 1938, #58). The total of the one- and two-family houses held by Group V Savings Banks on January 1, 1944, is so negligible that the trial court should have drawn a contrary conclusion.

Similarly, if we take the totals used by the trial court and compare them with the total real estate in Brooklyn and Queens the conclusion is equally inevitable that the overhanging institutional real estate was negligible on January 1, 1944. As compared with the $17,105,680 of real estate held by Group V Savings Banks on January 1, 1944, the assessed valuation of real estate in Brooklyn for the tax year 1944-45 is $3,290,594,000. As compared with the $3,857,742 of real estate held by Group V Savings Banks in Queens, the total assessed valuation of Queens real estate for the tax year 1944-45 is $2,153,575,000.

It cannot be said from these figures that realty holdings of institutions and other unwilling owners were a sufficient factor in the real estate market to make such market abnormal.

Recent figures of the Home Owners Loan Corporation embracing its activities for the year 1944 show that the overhang of real estate in that corporation is comparatively very small (see article in New York Times, March

18, 1945, infra, p. 67). It appears that the Home Owners Loan Corporation has left only 832 of the 34,567 dwellings it had taken over in New York. Moreover, the corporation loaned a total of $509,918,504 on 80,115 dwellings in New York and 55% of this amount has been liquidated. *The corporation took over 195,970 dwellings as a result of mortgage defaults and by the end of 1944 it had sold 99% of these dwellings, leaving but 1,935 dwellings on its hands at the end of 1944 in the entire nation!*

C

We now consider the legislative assertion that the imposition of ceilings on rents and wages aggravates the old emergency and justifies the continuance of the moratorium. This assertion is false. It overlooks the fact that ceilings on rents and wages are themselves emergency measures justified only because the economic welfare requires their imposition in order to prevent runaway inflation. The Office of Price Administration, created under the Emergency Price Control Acts (supra, p. 21), is empowered to control rents because the demand for housing is greater than the supply and rents would skyrocket unless controlled. In addition to the O.P.A. rent regulations relating to residential housing, the New York State Legislature has provided for rent regulations in the business and industrial field. In the session just concluded on March 24, 1945, ceilings have been imposed on industrial rents (Ch. 3, Laws of 1945, as amended by Ch. 315, Laws of 1945) and on office and store rents (Ch. 314, Laws of 1945). Both Chapter 3 and Chapter 314 of the Laws of 1945 contain a declaration of emergency which purports to justify the exercise of the reserved power of the State so as to restrict the rights of landlords under existing and future leases and rental agreements (see infra, pp. 65-66).

It must be clear that the public emergency which gave rise to the moratorium law in 1933 was the result of conditions which were the direct opposite of conditions existing today. The pendulum has swung from the extreme left to

the extreme right. The economic cycle has carried us from the depths of depression to a period of great prosperity. This prosperity has been induced to a substantial degree by the war and is therefore attended by great dangers to the public welfare. Congress, the President, the legislative and executive branches of government in the nation and the states have recognized the potential dangers to the people in the form of inflation, rent gouging, reckless evictions of families unable to pay exorbitant rents, over-reaching by landlords against business and industrial tenants, whether engaged in war production or not, and related abuses which experience has taught us to expect when there has been a stoppage of building construction and production for civilian use is severely curtailed.

One of the cures which has been prescribed by the President is the payment of debts. The Governor of the State of New York, in his 1943 and 1944 messages, issued a similar prescription at the same time that he recommended continuance of the moratorium. The state cannot pursue two diametrically opposite courses of action and attempt to justify both by the existence of alleged emergencies said to spring from separate sets of economic conditions which could not possibly co-exist. The reserved power of the state cannot be called upon simultaneously to justify otherwise unconstitutional legislation which, on the one hand undertakes to deal with a deflated economy, and on the other hand undertakes to deal with an inflated economy.

It is impossible to reconcile the existence of an alleged emergency which threatens to send rentals skyrocketing with the alleged continuance of economic conditions which render it impossible for property owners to live up to their mortgage contracts. This does not mean that some people may not still have trouble meeting their mortgage debts. It is true that some workers have not benefited by the improvement in economic conditions to the same extent that workers generally have so benefited. But the test of the continued validity of the moratorium law is not whether there are still some surviving cases of hardship, but rather,

whether conditions generally have not so improved that the public welfare no longer requires the holders of mortgage contracts to sacrifice their rights for the general good.

We understand from the *Blaisdell* case (supra, p. 446) that the exercise of the reserved power of the state will be sustained when it is dealing with the general or typical situation. When the situation is no longer general or typical, such legislation cannot be sustained. The typical situation today is one where every adult in the family is either in the service or has a job and, even after paying taxes, still has more money left than he can spend on worthwhile things. Part of this excess money goes into savings banks and war bonds. More of it goes for amusements. Some of it finds its way into the black market. President Roosevelt and Governor Dewey have both said this money should be used to pay debts.

D

The fact that over one million residents of New York State are serving in the armed forces of the nation cannot justify the renewal of the moratorium, for they do not require moratorium legislation for their protection.

The Soldiers and Sailors Civil Relief Act of 1940 (Public Law No. 861, 76th Congress, Chap. 888, 3rd session, as amended by Public Law 732, 77th Congress, Chap. 581, 2nd session) affords the men and women of the State of New York serving in the armed services and their dependents greater protection against mortgage foreclosure than the New York State Mortgage Moratorium Law.

While there is no absolute prohibition against foreclosure where the default is solely for non-payment of principal, the court in which any proceeding is commenced for any breach of the terms of the mortgage "may, after hearing, in its discretion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service:

(a) stay the proceedings as provided for in this Act;

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties" (50 U. S. C. A. App., Sec. 532 (2); 54 Stat. 1182, as amended by 56 Stat. 771, 772).

Under Section 204 of the Act (54 Stat. 1182, 50 U. S. C. A. App. Sec. 524, Chap. 888; Public Law 861, 76th Congress) the court may stay any action or proceeding for the period of military service and three months thereafter, subject to such terms as may be just.

There is further provision that no sale, foreclosure, or seizure of property for non-payment of any sum due under any mortgage obligation made prior to a service man's induction or for any breach of the terms thereof, shall be valid if made after the date of the enactment of the Soldiers and Sailors Relief Act Amendments of 1942, and during the period of military service or within three months thereafter, unless upon an order previously granted by the court and a return thereto made and approved by the court (50 U. S. C. A. App. Sec. 532 (3), Chap. 581; Public Law 732, 77th Congress, Sec. 302 (3); 54 Stat. 1182, as amended by 56 Stat. 771, 772).

Under this Civil Relief Act the men and women of the services are afforded the complete protection of our courts not only as to mortgages made before July 1, 1932, as in the case of the New York State Mortgage Moratorium Law, but also those made after that date and before their induction into military service.

Relief is afforded not only for a breach of non-payment of principal but for any breach of the mortgage contract including defaults for non-payment of interest and taxes. This Act protects not only the service men and women but also their dependents (Chap. 581, Sec. 306, 56 Stat. 772).

It may be added that the Civil Relief Act applies not only to the mortgage contract but to any obligation of a service man or woman arising before their induction.

POINT V

The Court of Appeals gives no valid reason to sustain the statute.

Chief Judge Lehman states (supra, p. 628):

> "The Legislature did not, in 1943, find that these conditions still existed. It found only that the 'serious public emergency' existing in 1933 and 'resulting' from these conditions still existed. In 1943 the fact that payrolls and savings bank deposits had increased in almost unprecedented degree was a matter of common knowledge. The Legislature could not ignore the great changes in the economic situation."

The Chief Judge then attempts to justify the statute by the "apprehension that a flood of foreclosure actions" would follow its termination and by "the fact that abnormal conditions incident to a war economy or resulting from other causes might still constitute a threat" to the public welfare. In the preceding point we have demonstrated that the fear of foreclosures is no valid reason for continuing the statute. For such a reason would extend the impairment of contracts beyond the constitutional limitation. We have also shown that the abnormal conditions incident to a war economy require the payment of debts rather than forbearance.

The only element of justification left in the Court of Appeals opinion is the statement that while the adverse conditions of 1943 have passed "the public emergency" resulting from these conditions still exists. It is difficult to understand how the emergency could continue after the conditions creating it have passed. Further, it is difficult to see how it makes any difference, from a constitutional standpoint. There is no constitutional power in the legislature to extend the remedy beyond the existence of the abnormal conditions which originally justified it. Although the Court of Appeals has drawn a sharp distinction be-

tween the emergency and the adverse conditions it created, the court has failed to use language which suggests any genuine basis for the distinction. What is it that survives the improvement in conditions and continues to exist as an emergency?

If a man of substantial means was wiped out in the stock market crash of 1929, he might still be penniless today even though the stock market had long since fully recovered and the conditions causing the crash had completely righted themselves. It might be said that the emergency survived insofar as it affected the individual crash victim, but such personal emergency or individual hardship could not justify the extension of legislation enacted for the general public welfare which suspended contractual obligations pending the return of economic equilibrium. An earthquake, fire or flood might render many people homeless and therefore call into being the reserved power of the State so as to bring relief to the victims of the catastrophe, but the legislative relief thus granted could not be continued until the victims had been fully restored, physically and financially, to their prior status. Such an event might never come to pass. The legislation is warranted so long as there is trouble of a public nature to deal with but it cannot continue on for the relief of individual hardship even though there be a large number of persons suffering such hardship.

The temporary suspension of constitutional mandate can be justified only in the general public interest. Specifically, the suspension of the obligation of mortgage contracts was justified by the general economic need in order to preserve some semblance of values and prevent widespread financial ruin due to temporary critical conditions. The heart of the moratorium legislation is the economic crisis. Just as the human body cannot survive when the heart stops beating, so the restriction on mortgagee's contractual rights cannot validly live on after the economic crisis has passed.

Reflecting on this well-recognized doctrine, the query recurs as to what the Court of Appeals meant by its holding that the emergency persists although the adverse economic conditions are no more. We submit it must have meant that, while the economic welfare of the public generally had been fully restored and they no longer require legislative relief from mortgage obligations, yet there were numerous individual situations which the general economic improvement had not helped and as to them, a so-called emergency survived. The existence of such a circumstance cannot save the legislation.

In concluding the prevailing opinion, Chief Judge Lehman states:

> "It is entirely unimportant whether the conditions then existing have created a new emergency, as said by the Governor in his message, or have, as the Legislature said, resulted in the continuance of an emergency itself created by conditions which have run their course. The question which the court must decide is whether the Legislature in the challenged statute has provided an appropriate remedy to tide over an exigency resulting from present conditions. We have said in an analogous case that: 'Whether an emergency exists or not, the test in each case is whether a situation exists which calls for the exercise of the reserved power of the state and whether the remedy adopted by the state is reasonable and legitimate.' (Matter of People [Tit. & Mtge. Guar. Co.], supra, p. 94.)"

We refer to the foregoing language of the Court of Appeals because we do not understand it. If it means that it is within the power of the New York State Legislature to pass a statute impairing the obligation of mortgage contracts in the absence of an economic crisis possessing the character and proportions of a public emergency, then such holding is in conflict with the decision of this Court in the *Blaisdell* case (supra) and should be reversed. On the other hand, if it means that an economic crisis is still

required, it makes no difference whether we call such a crisis an "emergency" or a "situation", the principle is the same. In any event, the language is confusing and might be construed to confer a power upon the State Legislature which this Court has repeatedly denied.

CONCLUSION

The judgment of the Court of Appeals should be reversed with costs and the case remitted to the Supreme Court with a direction that judgment be entered in favor of the plaintiff.

Respectfully submitted,

JOHN P. McGRATH,
Counsel for Appellant.

JOHN P. McGRATH,
JOHN J. BUCKLEY,
CHARLES H. HEINLEIN,
on the brief.

EXHIBIT I

CHAPTER 793, LAWS OF 1933

AN ACT to amend the civil practice act, in relation to foreclosure of mortgages and actions for judgments on bonds secured by mortgages.

BECAME a law August 26, 1933, with the approval of the Governor. Passed, on message of necessity, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. It is hereby declared that a serious public emergency, affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafer prescribed, and their application until July first, nineteen hundred thirty-four, is hereby declared as a matter of legislative determination.

Section 2. The civil practice act is hereby amended by inserting therein new sections, to be sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-d, ten hundred seventy-seven-e, ten hundred seventy-seven-f and ten hundred seventy-seven-g, to read as follows:

Section 1077-a. FORECLOSURE FOR PRINCIPAL DEFAULTS SUSPENDED.—During the period of the emergency as defined in section ten hundred seventy-seven-g, and notwithstand-

ing any inconsistent provisions of the civil practice act or of any other general or special law, or of any agreement, bond or mortgage, no action or proceeding for the foreclosure of a mortgage upon real property, nor any foreclosure under article seventeen of the real property law, shall be maintainable, solely for or on account of default in the payment of principal secured by such mortgage or solely in the payment of any installment of principal secured by such mortgage, although the payment of such principal or installment of principal may be due by the terms of such agreement, bond or mortgage, provided, however, that where a default authorizing foreclosure shall have occurred under the terms of the bond or mortgage or other agreement, other than the non-payment of principal or an installment of principal, and any grace period therein specified shall have expired, then the rights and remedies of the holder of the mortgage shall not be affected by this act.

Section 1077-b. ACTIONS ON BONDS FOR PRINCIPAL DEFAULTS SUSPENDED.—No action shall be maintainable or judgment shall be entered during such emergency, upon any loan, indebtedness, bond, extension agreement, collateral bond, or other evidence of indebtedness or liability, whether or not such indebtedness or liability shall have been thereafter reduced, extended, or modified, if the indebtedness originated or was originally contracted for simultaneously with such mortgage and is secured solely by such mortgage, or upon any guaranty of payment of the principal or installment of principal of any mortgage within the scope of section ten hundred seventy-seven-a or upon a guaranty of any obligation secured by such mortgage, so long as no action or proceeding shall be maintainable to foreclose such mortgage. No action shall be maintainable or judgment be entered during such emergency upon any guaranty of payment of any share or part of any bond and/or mortgage or group of bonds and/or mortgages

represented by a certificate, bond, debenture or other instrument, nor upon any note, bond, debenture or other instrument being part of a series issued against, or secured by the deposit of a bond and/or mortgage or a group of bonds and/or mortgages so long as interest at the rate prescribed shall be paid upon any such certificate, note, bond, debenture or other instrument. The liability of any endorser, guarantor of, or surety for any such liability shall not be discharged by reason of the failure of the holder to demand payment of any such indebtedness or liability, or by reason of any failure to give notice of non-payment, or by reason of any failure to bring any action or proceeding thereon during the emergency.

Section 1077-c. NOTICE OF APPLICATION.—Notwithstanding the foregoing provisions, any person who would otherwise have the right to foreclose a mortgage, shall have the right to make an application to any court in which such foreclosure action might be brought upon eight days notice, served personally, or in such manner as the court may direct to the last record owner of the mortgaged property, and if upon such application it shall appear to the satisfaction of the court that the mortgaged property during the six months prior to the application shall have produced a surplus over and above the taxes, interest and all other carrying charges, then the court may make an order directing the payment of such surplus or such part thereof as the court may determine to the mortgagee to apply toward the reduction of any past due principal. In the event of default in making of such payment for thirty days after service of a copy thereof with notice of entry thereof, then and in such event the applicant may maintain an action to foreclose such mortgage. In any such proceeding the court may enter an order permitting foreclosure without other proof if the owner of the property shall fail to make available for inspection by the mortgagee and the court all records and data available

as to the income and disbursements, or if the owner shall fail to produce adequate records or data of income and disbursements.

This section shall not apply to properties used or intended to be used for farming purposes or dwellings occupied by the owner or by the owner in conjunction with not more than one other family.

Section 1077-d. WAIVER AGAINST PUBLIC POLICY.—Any covenant or agreement or understanding in or in connection with or collateral to any mortgage whereby a mortgagor waives or agrees to waive the protection intended to be afforded to him by sections ten hundred seventy-seven-a and ten hundred and seventy-seven-b, shall be deemed to be void as against the public policy and be wholly unenforceable.

Section 1077-e. APPLICATION TO PENDING ACTIONS.—Sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-d shall apply to any action or proceeding heretofore instituted for the foreclosure of a mortgage within the scope of this act unless the same has proceeded to final judgment directing the sale of the mortgaged premises, and any such action shall be dismissed upon payment by any defendant to the plaintiff of taxable costs and the remedying of any default other than the payment of principal or any installment of principal within thirty days after this act takes effect, but otherwise such action or proceeding may continue.

Section 1077-f. STATUTE OF LIMITATIONS NOT TO RUN DURING EMERGENCY.—Any action or proceeding within the scope of this act, which would have been maintainable at any time during the period of the emergency, shall not be barred by any provision of article two of the civil practice act during a period of one year after the termination of the emergency. This section shall not be construed to shorten the period within which any such action may be commenced.

Section 1077-g. MORTGAGES NOT AFFECTED.—The provision of sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-d, ten hundred seventy-seven-e and ten hundred seventy-seven-f shall not apply to any mortgage held by a savings and loan association, payable in monthly installments over a period of more than ten years from the time of the making of the loan, or made in accordance with the provisions of sections three hundred eighty-four or three hundred eighty-five of the banking law nor to any mortgage dated on or after July first, nineteen hundred thirty-two, nor to any obligations in connection with or secured by any such mortgages. The period of the emergency shall be from the date this act takes effect until July first, nineteen hundred thirty-four.

Section 3. If any section, part or provision of this act shall be declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall be limited to the section, part or provision directly involved in the controversy in which such declaration was made and shall not affect any other section, provision or part thereof.

Section 4. This act shall take effect immediately.

EXHIBIT II

CHAPTER 93, LAWS OF 1943

AN ACT to amend chapter seven hundred eighty-two of the laws of nineteen hundred forty-one, entitled "An Act to amend the civil practice act, in relation to foreclosure of mortgages and actions for judgments on bonds secured by mortgages and to extend the mortgage moratorium and setting forth the terms and conditions of such extension," in relation to continuing the provisions thereof until July first, nineteen hundred forty-four.

BECAME a law March 11, 1943, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one of chapter seven hundred eighty-two of the laws of nineteen hundred forty-one, entitled "An Act to amend the civil practice act, in relation to foreclosure of mortgages and actions for judgments on bonds secured by mortgages and to extend the mortgage moratorium and setting forth the terms and conditions of such extension," is hereby amended to read as follows:

Section 1. The serious public emergency, which existed at the time of the enactment of sections ten hundred and seventy-seven-a, ten hundred and seventy-seven-b, ten hundred and seventy-seven-c, ten hundred and seventy-seven-d, ten hundred and seventy-seven-e, ten hundred seventy-seven-f and ten hundred and seventy-seven-g of the civil practice act, as added by chapter seven hundred and ninety-three of the laws of nineteen hundred thirty-three, and at

the time of the enactment of section ten hundred and seventy-seven-cc of the civil practice act, as added by chapter eight hundred and ninety of the laws of nineteen hundred thirty-four, having continued, in the judgment of the legislature, to the present time and still existing, the provisions of such chapters seven hundred and ninety-three of the laws of nineteen hundred thirty-three and eight hundred and ninety of the laws of nineteen hundred thirty-four shall, notwithstanding any provision of such chapter, remain and be in full force and effect until July first, nineteen hundred forty-four, and, in conformity with such extensions, section ten hundred and seventy-seven-g of the civil practice act, as added by such chapter seven hundred and ninety-three of the laws of nineteen hundred thirty-three and last amended by chapter seven hundred and eighty-two of the laws of nineteen hundred forty-one, is hereby amended to read as follows:

Sec. 1077-g. Mortgages not affected. The provisions of sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-cc, ten hundred seventy-seven-d, ten hundred seventy-seven-e and ten hundred seventy-seven-f shall not apply to any mortgage or the modification or extension of any mortgage insured, or hereafter insured under the provisions of the national housing act in effect June twenty-seventh, nineteen hundred thirty-four, as said act has been or is hereafter amended from time to time or to any mortgage held by a savings and loan association, payable in monthly installments over a period of more than ten years from the time of the making of the loan, or made in accordance with the provisions of sections three hundred eighty-four or three hundred eighty-five of the banking law nor to any mortgage dated on or after July first, nineteen hundred thirty-two, nor to any installments or amortization of principal, the payment of which

is provided for by extension or modification executed on or after July first, nineteen hundred thirty-seven, nor to the mortgages so extended or modified, nor to any obligations in connection with or secured by any such mortgages. The provisions of said sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-cc, ten hundred seventy-seven-d, ten hundred seventy-seven-e and ten hundred seventy-seven-f, shall apply to the final payment of principal of the mortgages so extended or modified if all installments or amortization the payment of which is provided for by such extension or modification are made as provided for by such extension or modification.

Notwithstanding the provisions of sections ten hundred seven-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-cc, ten hundred seventy-seven-d, ten hundred seventy-seven-e, and ten hundred seventy-seven-f, and in addition, to the cases therein provided for the commencement of foreclosure actions, and not in limitation thereof, any owner or holder of a mortgage covering real property as to which there is a default in the payment of any of the principal amount thereof as provided in the instrument creating the mortgage debt or any modification or extension thereof may commence an action to foreclose such mortgage unless the owner of the mortgaged premises shall pay the unpaid principal amount thereof at the rate of one per centum per annum. Such principal payments shall accrue from July first, nineteen hundred forty-two and shall be payable on October first, nineteen hundred forty-two and quarterly thereafter.

In any action or proceeding for the foreclosure of a mortgage on real property or any interest therein or in any foreclosure under article seventeen of the real property law instituted by reason of default in the payment of installment or amortization the payment of which is provided for by such extension or modification, or by the

terms of this section, if such action or proceeding has not proceeded to final judgment directing the sale of the mortgaged premises, then such action shall be dismissed and discontinued upon the payment by any defendant to the plaintiff of the taxable costs and disbursements, and the payments of such installment or amortization in default and the remedying of any other default under the terms of such mortgage or extension or modification. The period of the emergency shall be from the date this act takes effect until July first, nineteen hundred forty-four.

Section 2. This act shall take effect immediately.

EXHIBIT III

CHAPTER 378, LAWS OF 1945

Introduced by Senate Committee on Rules.

AN ACT to amend the civil practice act, in relation to foreclosure of mortgages and actions for judgments on bonds secured by mortgages and to further extend the mortgage moratorium and setting forth the terms and conditions of such extension.

BECAME a law April 2, 1945, with the approval of the Governor.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The serious public emergency, which existed at the time of the enactment of sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-d, ten hundred

seventy-seven-e, ten hundred seventy-seven-f, and ten hundred seventy-seven-g of the civil practice act, as added by chapter seven hundred ninety-three of the laws of nineteen hundred thirty-three, and at the time of the enactment of section ten hundred seventy-seven-cc of the civil practice act, as added by chapter eight hundred ninety of the laws of nineteen hundred thirty-four, having continued, in the judgment of the legislature, to the present time and still existing because of the large amount of real estate which would be subject to immediate foreclosure if such sections and chapters were not continued in force and effect, and such emergency having been aggravated by the substantial amount of foreclosed real estate still held by insurance, banking and other financial institutions, by the imposition of ceilings on rents and wages at a time when there has been a disproportionate rise in maintenance and repair costs, and by the fact that over one million of the residents of this state are serving in the armed services of the nation, the provisions of such chapters seven hundred ninety-three of the laws of nineteen hundred thirty-three and eight hundred ninety of the laws of nineteen hundred thirty-four, as amended, shall, notwithstanding any provision of such chapters, remain and be in full force and effect until July first, nineteen hundred forty-six, and section ten hundred seventy-seven-g of the civil practice act, as added by chapter seven hundred ninety-three of the laws of nineteen hundred thirty-three and last amended by chapter five hundred sixty-two of the laws of nineteen hundred forty-four, is hereby amended to read as follows:

Section 1077-g. Mortgages not affected. The provisions of section ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-cc, ten hundred seventy-seven-d, ten hundred seventy-seven-e and ten hundred seventy-seven-f shall not apply to any mortgage or the modification or extension

of any mortgage insured, or hereafter insured under the provisions of the national housing act in effect June twenty-seventh, nineteen hundred thirty-four, as said act has been or is hereafter amended from time to time or to any mortgage held by a savings and loan association, payable in monthly installments over a period of more than ten years from the time of the making of the loan, or made in accordance with the provisions of section three hundred eighty-four or three hundred eighty-five of the banking law nor to any mortgage dated on or after July first, nineteen hundred thirty-two, nor to any installments or amortization of principal, the payment of which is provided for by extension or modification executed on or after July first, nineteen hundred thirty-seven, nor to the mortgages so extended or modified, nor to any obligations in connection with or secured by any such mortgages. The provisions of said sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-cc, ten hundred seventy-seven-d, ten hundred seventy-seven-e, and ten hundred seventy-seven-f, shall apply to the final payment of principal of the mortgages so extended or modified if all installments or amortization the payment of which is provided for by such extension or modification are made as provided for by such extension or modification.

Notwithstanding the provisions of sections ten hundred seventy-seven-a, ten hundred seventy-seven-b, ten hundred seventy-seven-c, ten hundred seventy-seven-cc, ten hundred seventy-seven-d, ten hundred seventy-seven-e, and ten hundred seventy-seven-f, and in addition to the cases therein provided for the commencement of foreclosure actions, and not in limitation thereof, any owner or holder of a mortgage covering real property as to which there is a default in the payment of any of the principal amount thereof as provided in the instrument creating the mortgage debt or any modification or extension thereof may commence an action to foreclose such mortgage unless the owner of the

mortgaged premises shall pay the unpaid principal amount thereof at the rate of one per centum per annum for the period commencing July first, nineteen hundred forty-two, and terminating June thirtieth nineteen hundred forty-four and at the rate of two per centum per annum for the period commencing July first, nineteen hundred forty-four, and terminating June thirtieth, nineteen hundred forty-five, and at the rate of three per centum per annum thereafter. Such principal payments shall accrue from July first, nineteen hundred forty-two and shall be payable on October first, nineteen hundred forty-two and quarterly thereafter.

In any action or proceeding for the foreclosure of a mortgage on real property or any interest therein or any foreclosure under article seventeen of the real property law instituted by reason of default in the payment of installment or amortization the payment of which is provided for by such extension or modification, or by the terms of this section, if such action or proceeding has not proceeded to final judgment directing the sale of the mortgaged premises, then such action shall be dismissed and discontinued upon the payment by any defendant to the plaintiff of the taxable costs and disbursements, and the payments of such installment or amortization in default and the remedying of any other default under the terms of such mortgage or extension or modification. The period of the emergency shall be from the date this act takes effect until July first, nineteen hundred forty-six.

Section 2. This act shall take effect immediately.

EXHIBIT IV

Extract from Chapter 3 of Laws of 1945 containing declaration of emergency. This act establishes emergency rent control for commercial space in the State of New York.

"Section 1. Unjust, unreasonable and oppressive leases and agreements for the payment of rent for commercial space in certain cities having been and being now exacted by landlords from tenants under stress of prevailing conditions accelerated by the present war, whereby a breakdown has taken place in normal processes of bargaining and freedom of contract has become an illusory concept, and whereby there have come into existence conditions threatening to obstruct war production and the production and distribution of essential civilian commodities, and to cause inflation, and all of the foregoing situations and conditions being a threat to the successful prosecution of the war and essential civilian activities, and to the public safety, health, and general welfare of the people of the state of New York, it is hereby declared that a public emergency exists, which is increasing in intensity without slackening and without promise of relief so long as present war conditions continue, and that action by the legislature is imperative and will not permit of delay. It is hereby found by the legislature that for the duration of such emergency, the establishment of a maximum rent for commercial space at a level of fifteen per centum above rents charged on March first, nineteen hundred forty-three, or at a level otherwise determined as provided herein, will curb the evils arising from such emergency and will accomplish the purposes hereby sought to be achieved. This act is declared to be a measure designed to protect and promote the public health, safety and general welfare, to aid the successful prosecution of the war, and essential civilian activities, and to prevent inflation, and is made necessary by an existing public emergency."

EXHIBIT V

Extract from Chapter 314 of Laws of 1945 containing declaration of emergency. This act establishes emergency rent control for business space in the State of New York.

"Section 1. Unjust, unreasonable and oppressive leases and agreements for the payment of rent for office space and retail stores and other business space in certain cities having been and now being exacted by landlords under stress of prevailing conditions accelerated by the war, and an abundance of eviction proceedings against tenants having been commenced or threatened by landlords, whereby breakdown has taken place in normal processes of bargaining and freedom of contract has become an illusory concept, and whereby there have come into existence conditions threatening to obstruct war production, and the production and distribution of essential civilian commodities, and the rendition of essential services, professional and otherwise, and to divert essential manpower materials and transportation facilities, and to cause inflation, and all of the foregoing situations and conditions being a threat to the successful prosecution of the war and essential civilian activities, and to the public safety, health and general welfare of the people of the state of New York, it is hereby declared that a public emergency exists, which is increasing in intensity without slackening and without promise of relief so long as present war conditions continue, and that action by the legislature is imperative and will not admit of delay. It is hereby found, therefore, as a matter of legislative determination, that for the duration of such emergency, the establishment of a maximum rent for office and retail store and other business space at a level of fifteen per centum above rents charged on June first, nineteen hundred forty-four or at a level otherwise determined as hereinafter provided, will curb the evils arising from such emergency and will accomplish the purposes hereof. This act is declared to be a measure designed to protect and promote the public health, safety and general welfare, to aid the successful prosecution of the war, and essential civilian activities, and to conserve manpower, essential materials and transportation facilities, and to prevent inflation, and is made necessary by an existing emergency."

EXHIBIT VI

ARTICLE, NEW YORK TIMES FOR MARCH 18, 1945.

"HOLC IN 1944 SOLD 5,843 HOUSES HERE

It Started New Year Owning Only 832 of the 34,567 Properties it Took Over.

Book Losses Are Heavy

But Fahey Forecasts Original Capital of $200,000,000 Will be Repaid in Full.

Under the impetus of a brisk wartime market and aggressive steps to improve its position in this area, the Home Owners Loan Corporation in New York last year sold 5,843 houses that it had been forced to take over in foreclosure, John H. Fahey, Commissioner of the Federal Home Loan Bank Administration, reported yesterday. The agency also succeeded in reducing its mortgages and investments in the State by $54,657,343 to a balance of $230,277,500 at the end of 1944.

The sales completed in this State last year represented more than half of the total sales for the nation and left the HOLC with only 832 of the 34,567 dwellings it had taken over in New York. Nearly half the houses it now owns are in this State, and their capitalized value amounts to $6,321,606 out of the $11,407,000 for the national holdings of 1,935 houses.

LIQUIDATION AT 55% MARK

Liquidation of the $509,918,504 in advances made on 80,115 dwellings in New York has reached 55 per cent. In the nation the total loans and investments have been reduced from $3,489,000,000 to $1,103,000,000, or by 68.4 per cent.

At the beginning of this year the HOLC had only 1,935 foreclosed homes on its hands, compared with 13,504 at the beginning of 1944. It has sold 99 per cent of the 195,970 dwellings that it took through mortgage defaults.

The foreclosures in the nation involved less than 20 per cent of the 1,017,821 original losses, compared with 42 per cent in this State. More than one-sixth of the foreclosures involved New York properties.

Book losses running into 'many millions' have been sustained in foreclosures and subsequent re-sales in this State as well as in some other parts of the nation, but these losses have been offset in part by income from interest on loans and rents. Foreclosure acquisitions now have virtually ceased.

Besides HOLC's advances to mortgage holders in taking over more than a million loans, the agency absorbed and charged off more than $58,000,000 in loan-making costs and disbursed about $704,000,000 in advances for borrowers' accounts and other expenses on its investments.

These charges included $484,000,000 in taxes, $202,000,000 for repairs and reconditioning of foreclosed dwellings, and $18,000,000 for insurance on these properties.

Full Repayment Forecast

'Notwithstanding these extraordinary disbursements in addition to the amount of the old mortgages refinanced by the corporation, projections of the trend of HOLC operations indicate that the corporation's future net income, after operating expenses, should be sufficient to wipe out all accumulated losses and thus enable HOLC to pay back its entire original capital of $200,000,000 to the United States Treasury with no expense to the taxpayers,' Mr. Fahey said.

During the past year, he explained, HOLC principal collections reached a new high mark of $300,000,000.

The $230,000,000 still on the HOLC books in New York State at the end of 1944 represented the accounts of 66,197 borrowers and $6,321,606 in capitalized value of the 832 houses it still owned. More than 54,000 debtors were reported to be making payments on schedule and 10,517 were less than three months in arrears on payments."